

Memorandum 94-20

Conflict of Interest Code: Disclosure Categories

The revised agency Conflict of Interest Code has been approved by the Fair Political Practices Commission (FPPC) and gone through all the required filings. The Commission now must consider to what extent disclosure categories need to be revised to reflect the potential conflicts that could arise under studies currently or potentially under active consideration.

Background

An overview of the situation is in order. The Commission's function presents a special challenge for the Political Reform Act of 1976. The Commission's authority is potentially unlimited — it depends upon what the Legislature authorizes for study. Traditionally, the Commission has retained subjects on its calendar for maintenance purposes. The Commission assumes the responsibility of monitoring the experience under statutes enacted on Commission recommendation. Thus, it is important to continue authority to study relatively recent studies. After five or 10 years have passed with no apparent problems, the Commission may drop a study from its calendar, as the Commission has decided to do in its current resolution. (See Exhibit pp. 5-8.)

At the same time, it is inefficient and unproductive to require disclosure of "potential conflicts" as to topics that are not under active consideration and are not likely to be. Regardless of the possibility of finding such a conflict, Commissioners have been subject to the duty to look for them under the current disclosure categories based on the full set of authorized studies. At the same time, the addition of new topics to the Commission's calendar, it was possible that the list of financial interests need expansion to cover potential conflicts of interest. At one time this required burdensome regulatory activity. While the FPPC and Office of Administrative Law have worked out more expeditious and less expensive procedures, the expedited rules still did not take account of the potential range and active-inactive nature of the Commission's calendar.

In response to this awkward situation, the Commission initiated the process of revising the agency Conflict of Interest Code with the aim of adopting a

mechanism for tailoring the disclosure duty to satisfy the requirements of the Political Reform Act. The FPPC has responded favorably to the Commission's initiative, although the process took quite a bit of time due to the loss of staff at FPPC and general bureaucratic demoralization from budget cuts during the last two years. The revised Conflict of Interest Code is attached; note that it also includes some technical changes required by the FPPC. (See Exhibit pp. 1-3.)

New Procedure

The revised Conflict of Interest Code now includes the following mechanism:

Financial interests on this list are reportable if they relate to active topics on the Commission's Calendar of Topics. Active topics are topics the Commission has considered during the 12 months preceding, or to be considered during the 12 months following, the end of the applicable filing period, and are determined from the Commission's Annual Report, as specified by the Executive Secretary in a letter filed at least annually with the Fair Political Practices Commission.

In simpler terms, this means that disclosable interests are limited to those foreseeably affected by topics considered this year or likely to be considered next year. The process is implemented by a letter from the Executive Secretary to the FPPC conveying the list of active or anticipated topics and correlating the topics with the disclosable financial interests. The Conflict of Interest Code is silent on the degree of Commission involvement in the process of delineating the disclosable interests. The thought was that it would be best to insulate the Commission from direct participation in the process of limiting the list of disclosable interests.

The staff believes that the best way to implement the new Conflict of Interest Code is to wait until the Commission has decided what topics it intends to study — this is usually done at the September or October meeting. Then the Executive Secretary would prepare the letter to the FPPC reporting on active topics and correlating disclosable interests.

This process is applicable to the following list of entities that are stated in the Commission's Conflict of Interest Code:

The entities and persons listed below, in the jurisdiction of California, constitute financial interests of a type that foreseeably may be materially affected by a Law Revision Commission decision

concerning a topic on the Commission's Calendar of Topics Authorized for Study:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.
2. Mortgage brokers.
3. Collection agencies.
4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.
5. Any entities or persons whose primary activity in California is the leasing or development of real estate.
6. Any entities or persons whose primary activity in California is the leasing of personal property.
7. Insurance companies.
8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).
9. Title insurance companies.
10. Newspaper companies.
11. Corporate sureties.
12. Adoption agencies.
13. Persons engaging in private placing for adoption of more than one child per year.
14. Privately owned public utilities.
15. Law firms.
16. Any entities or persons engaged in the business of tracing heirs.
17. Any entities or persons engaged in the business of appraising property.

Also attached is a list of the Commission's calendar of topics set forth in the pending resolution to continue the Commission's authority. (See Exhibit pp. 5-8.)

When the time arrives for the next annual statement under the Political Reform Act, each Commissioner will be notified of the applicable list of disclosable financial interests.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

**CONFLICT OF INTEREST CODE
FOR THE
CALIFORNIA LAW REVISION COMMISSION**

[Showing revisions effective 1994]

The Political Reform Act, Government Code Sections 81000, *et seq.*, requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. ~~Adm.~~ Code of Regs. Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. ~~Adm.~~ Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the California Law Revision Commission.

~~Pursuant to Section 4(A) of the standard Code, designated~~ Designated employees shall file statements of economic interests with their ~~agencies~~ agency. Upon receipt of the statements of Commissioners and the Executive Secretary, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. The agency will make all statements available for public inspection and reproduction. (Gov't Code § 81008.)

APPENDIX

DESIGNATED EMPLOYEES

<i>Designated Employees</i>	<i>Disclosure Categories</i>
Commission Member (appointed by Governor)	1, 2
Legislative Counsel	1, 2
Executive Secretary	1, 2, 3
Assistant Executive Secretary	1, 2, 3
Staff attorneys	1
Administrative Assistant	2, 3

DISCLOSURE CATEGORIES

CATEGORY 1

A designated employee in this category must disclose the following:

1. Interests in real property.
2. Investments in business entities listed below.
3. Personal income from entities or persons listed below.

4. Business entity income from entities or persons listed below.
5. Business positions in entities listed below.

The ~~following~~ entities and persons listed below, in the jurisdiction of California, constitute ~~the~~ financial interests which of a type that foreseeably may be materially affected by a Law Revision Commission decision concerning a topic on the Commission's Calendar of Topics Authorized for Study:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.
2. Mortgage brokers.
3. Collection agencies.
4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.
5. Any entities or persons whose primary activity in California is the leasing or development of real estate.
6. Any entities or persons whose primary activity in California is the leasing of personal property.
7. Insurance companies.
8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).
9. Title insurance companies.
10. Newspaper companies.
11. Corporate sureties.
12. Adoption agencies.
13. Persons engaging in private placing for adoption of more than one child per year.
14. Privately owned public utilities.
15. Law firms.
16. Any entities or persons engaged in the business of tracing heirs.
17. Any entities or persons engaged in the business of appraising property.

Financial interest on this list are reportable if they relate to active topics on the Commission's Calendar of Topics. Active topics are topics the Commission has considered during the 12 months preceding, or to be considered during the 12 months following, the end of the applicable filing period, and are determined from the Commission's Annual Report, as specified by the Executive Secretary in a letter filed at least annually with the Fair Political Practices Commission.

CATEGORY 2

A designated employee in this category must disclose business entities in which he or she has an investment or holds a business position and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the Law Revision Commission to provide

leased space or consulting services to or on behalf of the Law Revision Commission.

CATEGORY 3

A designated employee in this category must disclose business entities in which he or she has an investment or holds a business position and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the Law Revision Commission to provide equipment, materials, supplies, or services (other than consulting services) to or on behalf of the Law Revision Commission.

BILL NUMBER: SCR 34 INTRODUCED 02/18/94
INTRODUCED BY Senator Roberti

Senate Concurrent Resolution No. 34
Relative to the California Law Revision Commission.

LEGISLATIVE COUNSEL'S DIGEST

SCR 34, as introduced, Roberti. California Law Revision Commission.

Existing law requires the California Law Revision Commission to file a report at each Regular Session of the Legislature containing a calendar of topics selected by it for study, including a list of studies in progress and a list of topics intended for future consideration, and, after the filing of the commission's first report, its studies are confined to topics set forth in the calendar contained in its last preceding report that are thereafter approved for its study, or referred to it for study, by concurrent resolution of the Legislature.

This measure would give legislative approval to the commission to continue its study of numerous, specified topics that the Legislature has previously authorized or directed the commission to study, and would refer to the commission a new topic for study relative to tolling statutes of limitations while the defendant is out of state, and would delete from the commission's calendar of topics studies relative to involuntary dismissal for lack of prosecution, statute of limitation for felonies, modification of contracts, sovereign or governmental immunity, liquidated damages in contracts, parole evidence rule, and pleadings in civil actions.

Fiscal committee: yes.

1 WHEREAS, The California Law Revision Commission is authorized to
2 study only topics set forth in the calendar contained in its report to the
3 Governor and the Legislature that are thereafter approved for study by
4 concurrent resolution of the Legislature, and topics that have been referred to
5 the commission for study by concurrent resolution of the Legislature; and

6 WHEREAS, The commission, in its annual report covering its activities for
7 1993, lists 30 topics, all of which the Legislature has previously authorized or
8 directed the commission to study, lists one new topic that the commission
9 recommends it be authorized to study, and lists seven topics that the
10 commission recommends be deleted from its calendar of topics; now,
11 therefore, be it

12 Resolved by the Senate of the State of California, the Assembly thereof
13 concurring, That the Legislature approves for continued study by the

1 California Law Revision Commission the topics listed below, all of which the
2 Legislature has previously authorized or directed the commission to study:

3 (1) Whether the law relating to creditors' remedies (including, but not
4 limited to, attachment, garnishment, execution, repossession of property
5 (including the claim and delivery statute, self-help repossession of property,
6 and the Commercial Code repossession of property provisions), civil arrest,
7 confession of judgment procedures, default judgment procedures,
8 enforcement of judgments, the right of redemption, procedures under private
9 power of sale in a trust deed or mortgage, possessory and nonpossessory liens,
10 and related matters) should be revised.

11 (2) Whether the California Probate Code should be revised, including, but
12 not limited to, whether California should adopt, in whole or in part, the
13 Uniform Probate Code.

14 (3) Whether the law relating to real and personal property (including, but
15 not limited to, a Marketable Title Act, covenants, servitudes, conditions, and
16 restrictions on land use or relating to land, possibilities of reverter, powers of
17 termination, Section 1464 of the Civil Code, escheat of property and the
18 disposition of unclaimed or abandoned property, eminent domain, quiet title
19 actions, abandonment or vacation of public streets and highways, partition,
20 rights and duties attendant upon assignment, subletting, termination, or
21 abandonment of a lease, powers of appointment, and related matters) should
22 be revised.

23 (4) Whether the law relating to family law (including, but not limited to,
24 community property) should be revised.

25 (5) Whether the law relating to the award of prejudgment interest in civil
26 actions and related matters should be revised.

27 (6) Whether the law relating to class actions should be revised.

28 (7) Whether the law relating to offers of compromise should be revised.

29 (8) Whether the law relating to discovery in civil cases should be revised.

30 (9) Whether a summary procedure should be provided by which property
31 owners can remove doubtful or invalid liens from their property, including a
32 provision for payment of attorney's fees to the prevailing party.

33 (10) Whether acts governing special assessments for public improvements
34 should be simplified and unified.

35 (11) Whether the law on injunctions and related matters should be revised.

36 (12) Whether the law relating to the rights and disabilities of minor and
37 incompetent persons should be revised.

38 (13) Whether the law relating to custody of children, adoption,
39 guardianship, freedom from parental custody and control, and related matters
40 should be revised.

41 (14) Whether the Evidence Code should be revised.

42 (15) Whether the law relating to arbitration should be revised.

1 (16) Whether the decisional, statutory, and constitutional rules governing
2 the liability of public entities for inverse condemnation should be revised
3 (including, but not limited to, liability for damages resulting from flood
4 control projects) and whether the law relating to the liability of private
5 persons under similar circumstances should be revised.

6 (17) Whether there should be changes to administrative law.

7 (18) Whether the law relating to the payment and the shifting of attorneys'
8 fees between litigants should be revised.

9 (19) Whether the law relating to the adjudication of child and family civil
10 proceedings should be revised, and whether a Family Relations Code should
11 be established.

12 (20) Whether the Uniform Unincorporated Nonprofit Association Act, or
13 parts of the Uniform Act, and related matters should be adopted in California.

14 (21) Whether the law governing unfair competition litigation under
15 Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the
16 Business and Professions Code should be revised to clarify the scope of the
17 chapter and to resolve procedural problems in litigation under the chapter,
18 including the res judicata and collateral estoppel effect on the public of a
19 judgment between the parties to the litigation, and related matters.

20 (22) Whether the requirement of paragraph (2) of subdivision (b) of Section
21 800 of the Corporations Code that the plaintiff in a shareholder's derivative
22 action must allege the plaintiff's efforts to secure board action or the reasons
23 for not making the effort, and the standard under Section 309 of the
24 Corporations Code for protection of a director from liability for a good faith
25 business judgment, and related matters, should be revised.

26 (23) The proposed amendment to the Constitution contained in SCA 3
27 (Lockyer) of the 1993-94 Regular Session, pertaining to the unification of the
28 trial courts, with recommendations to be forwarded to the Legislature by
29 February 1, 1994, pertaining to the appropriate composition of the
30 amendment, and further recommendations to be reported pertaining to
31 statutory changes that may be necessitated by court unification; and be it
32 further

33 Resolved, That the Legislature refers to the California Law Revision
34 Commission for study the new topic listed below:

35 (1) Whether Section 351 of the Code of Civil Procedure, relating to tolling
36 statutes of limitations while the defendant is out of state, and related matters
37 should be revised; and be it further

38 Resolved, That the Legislature deletes from the calendar of the California
39 Law Revision Commission the topics listed below, all of which the
40 Legislature has previously authorized or directed the commission to study
41 and all of which the commission has completed its study of:

42 (1) Whether the law relating to involuntary dismissal for lack of
43 prosecution should be revised.

1 (2) Whether the law relating to statutes of limitations applicable to felonies
2 should be revised.

3 (3) Whether the law relating to modification of contracts should be revised.

4 (4) Whether the law relating to sovereign or governmental immunity in
5 California should be revised.

6 (5) Whether the law relating to liquidated damages in contracts generally,
7 and particularly in leases, should be revised.

8 (6) Whether the parol evidence rule should be revised.

9 (7) Whether the law relating to pleadings in civil actions and proceedings
10 should be revised; and be it further

11 Resolved, That the Secretary of the Senate transmit a copy of this
12 resolution to the California Law Revision Commission.
